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Grimsley & Miller, of Culpeper, for appellants.
J. L. Jeffries, of Norfolk, *Rixey & Hiden* and *Waite & Perry*, all of Culpeper, and *Thos. E. Blakey*, of Tappahannock, for appellees.

CITIZENS' BANK OF NORFOLK *v.* NORFOLK & W. RY. CO.

June 12, 1913.

[78 S. E. 568.]

1. Guaranty (§ 4*)—Construction of Contracts.—A railroad company in acknowledging receipt of assignments of coal by its line wrote to the shipper that they would deliver the coal on the order of a bank named with the "understanding and guarantee of the bank that all freight and demurrage charges accruing on such coal will be paid by the bank as presented," and requested that the necessary agreement be drawn up and executed by the bank, to which the bank replied that they wrote "to confirm our agreement to pay the just freights and demurrage charges on coal covered by this assignment." Held, that the letters constituted an agreement by the bank to itself pay freight and demurrage charges on the coal, and not merely to guarantee their payment.

[Ed. Note.—For other cases, see Guaranty, Cent. Dig. §§ 3-6; Dec. Dig. § 4.* 6 Va.-W. Va. Enc. Dig. 779; 14 Va.-W. Va. Enc. Dig. 500; 15 Va.-W. Va. Enc. Dig. 449.]

2. Carriers (§ 196*)—Freight—Actions for Demurrage—Sufficiency of Evidence.—Evidence in a proceeding by a railroad company to recover demurrage on coal shipments held to show that the railroad company did not waive its right to demand unpaid freight and demurrage, or do anything which would lead a reasonably prudent person to believe that it had waived such right.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 879-887; Dec. Dig. § 196.* 2 Va.-W. Va. Enc. Dig. 688; 15 Va.-W. Va. Enc. Dig. 157.]

3. Carriers (§ 100*)—Freight—Payment of Demurrage Charges.—Where a bank which had agreed to pay the freight and demurrage charges on coal shipments stated in answer to a communication from the railroad company as to what kind of notification it desired of the consignments that notification of the shipments in transit was sufficient, the bank could not afterwards claim that demurrage could not be recovered unless it was notified of the arrival of the cars by a notice containing the point of shipment, initials, numbers, and contents.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 427-433; Dec. Dig. § 100.* 2 Va.-W. Va. Enc. Dig. 688; 15 Va.-W. Va. Enc. Dig. 157.]

4. Carriers (§ 100*)—Freight—Demurrage.—The fact that terminal yards on which coal cars stood were six miles in length, so that the cars were not actually on the pier at their final destination, would not make them not subject to demurrage while standing in such yards awaiting the convenience of the consignee or the arrival of the vessel into which they were to be loaded; the leaving of the cars in the yards not having prejudiced the consignee.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 427-433; Dec. Dig. § 100.* 2 Va.-W. Va. Enc. Dig. 688; 15 Va.-W. Va. Enc. Dig. 157.]

Error to Law and Chancery Court of City of Norfolk.

Proceedings by the Norfolk & Western Railway Company against the Citizens' Bank of Norfolk. Judgment for plaintiff, and defendant brings error. Affirmed.

J. G. Martin, of Norfolk, for plaintiff in error.

Hughes, Little & Seawell, of Norfolk, for defendant in error.

SPRIGGS et al. *v.* JAMERSON.

June 12, 1913.

[78 S. E. 571.]

1. Appeal and Error (§ 843*)—Review—Matters Not Necessary to Decision.—The court will not construe Code 1904, § 3392, providing that not more than two new trials shall be granted to the same party in the same cause, where the motion for a third new trial was properly overruled by the trial court.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3331-3341; Dec. Dig. § 843.* 1 Va.-W. Va. Enc. Dig. 576; 14 Va.-W. Va. Enc. Dig. 90; 15 Va.-W. Va. Enc. Dig. 65.]

2. Ejectment (§ 94*)—Evidence—Identity of Land.—In an action of ejectment, evidence held not sufficient to identify the land occupied by the defendant as the land claimed by the plaintiffs.

[Ed. Note.—For other cases, see Ejectment, Cent. Dig. § 279; Dec. Dig. § 94.* 4 Va.-W. Va. Enc. Dig. 910.]

3. Ejectment (§ 9*)—Defense—Failure to Claim Title—Effect.—The failure of the defendant to claim title or right to the premises sued for in ejectment cannot be considered in determining the identity of the land, where the plaintiffs' evidence fails to make a prima facie case on that point.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.